

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. S-2628

PETITION OF HIMALAYAN ELDERLY CARE II, INC.

OPINION OF THE BOARD

(Opinion Adopted September 7, 2005)
(Effective Date of Opinion: October 7, 2005)

Case No. S-2628 is an application for a special exception pursuant to Section 59-G-2.26 (Group Home) of the Zoning Ordinance to permit expansion of a Small Group Home for the elderly into a Large Group Home for up to 16 residents. In addition, the petitioner requested a waiver of the requirements contained in Section 59-E-2.83(c) of the Zoning Ordinance, which pertain to screening for the on-site parking facility.

The subject property is Lot 3, Block B, Ednor Farms Subdivision, located at 17234 New Hampshire Avenue, Silver Spring, Maryland, 20905, in the RE-2 Zone.

The Hearing Examiner for Montgomery County held a hearing on the application on June 13, 2005, closed the record in the case on June 27, 2005, and on July 29, 2005 issued a Report and Recommendation for approval of the special exception, as well as the requested waiver from Section 59-E-2.83(c).

Decision of the Board: Special Exception **Granted** Subject
to the Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on September 7, 2005. After careful consideration and review of the record, the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. The Petitioners shall be bound by all of their testimony and exhibits of record, and by the testimony of their witnesses and the representations of their counsel identified in the Hearing Examiner's report and in the Board's opinion;

2. The Petitioners will house no more than 16 residents in the group home. There will be no resident staff, and up to 3 non-resident staff are permitted on the largest shift;

3. The Petitioners must possess, not later than the issuance date of the use and occupancy certificate, valid State of Maryland and County licenses, certificates, and/or registrations that may be required for a group home which provides assisted living to the elderly;

4. Petitioners shall include, in the contracts with their employees, clients, residents and contract providers, a term that requires users of the right-of-way accessing the subject site not to exceed the posted speed limit of 10 mile per hour on that right-of-way. In addition, written notices of that speed limit will be given to the management, staff, visitors and vendors who travel by vehicle to the facility, and another sign stating the speed limit as 10 miles per hour will be installed on the right-of way, with the agreement of the property owner thereof. No additional sign may be posted on Petitioners' property unless approved by the Sign Review Board, a permit is granted therefor, and the Board of Appeals receives a copy thereof;

5. Petitioners must maintain at least the 10 parking spaces called for in their "As-Built Site Plan" (Exhibit 20), and may not expand the parking facility without express permission from the Board through modification of this special exception; and

6. Petitioners may not use the land identified on the As-Built Site Plan (Exhibit 20) as "Parcel 2" to cut through to the *cul-de-sac* on Cliftonbrook Lane without express permission from the Board through modification of this special exception.

On a motion by Louise L. Mayer, seconded by Wendell M. Holloway, with Angelo M. Caputo and Allison Ishihara Fultz, Chair, in agreement and Donna L. Barron necessarily absent the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 7th day of October, 2005.

Katherine Freeman
Executive Director

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.